

REMARKS

Summary of Office Action

Claims 30, 31 and 37 filed on January 10, 2008 are withdrawn from consideration.

Claims 18-28, 32, 33 and 36 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Schreiber et al., U.S. Patent No. 6,613,338 (hereafter "SCHREIBER") in view of Pescatore et al., U.S. Patent No. 5,753,212 (hereafter "PESCATORE").

Claim 29 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over SCHREIBER in view of PESCATORE and further in view of Butuc, US 2002/0055562 A1 (hereafter "BUTUC").

Claims 34 and 35 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over SCHREIBER in view of PESCATORE and further in view of Fabrisi, U.S. Patent No. 5,860,756 (hereafter "FABRISI").

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the following remarks.

Response to Rejection of Claims 18-28, 32, 33 and 36 under 35 U.S.C. § 103(a)

Claims 18-28, 32, 33 and 36 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over SCHNEIDER in view of a newly cited document, i.e., PESCATORE (although the previous Office Action had indicated that claim 36 would be allowable). The rejection essentially

alleges that all elements which are recited in the rejected claims are at least inherently disclosed or rendered obvious by SCHREIBER and PESCATORE.

Applicants respectfully traverse this rejection. In particular, it is again pointed out that the present independent claims recite a water-in-oil emulsion which comprises, *inter alia*, from 5% to 50% by weight, based on the total weight of the emulsion, of at least one skin-moisturizing agent selected from the list of compounds recited in independent claims 18 and 36, *inter alia*, glycerol, glycine and lactic acid.

The Examiner appears to take the position that the use of at least 5% of glycerol, glycine and/or lactic acid in the compositions of SCHREIBER is rendered obvious because several of the exemplary compositions of SCHREIBER comprise glycerin and because glycine and lactic acid are both mentioned in SCHREIBER as examples of the one or more antioxidants which may optionally be present in a total concentration of from 0.001% to 30% by weight.

Applicants respectfully disagree with the Examiner's interpretation of the disclosure of SCHREIBER. In particular, although a number of the exemplary compositions of SCHREIBER contain glycerin, all of these compositions contain glycerin in a concentration of only 2% by weight, i.e., a concentration which is only 40 % of the lower value of the concentration range for the skin-moisturizing agent that is recited in the present claims.

Additionally, the body of the specification of SCHREIBER is completely silent regarding the use of glycerin, which is an indication to one of ordinary skill in the art that the presence of glycerin in the compositions of SCHREIBER is not associated with any particular advantage. This is also supported by the fact that the composition of Example 21 of SCHREIBER contains no glycerin at all.

Further, while moisturizers are mentioned in col. 2, line 22 of SCHREIBER, they are mentioned only as optional ingredients of lipcare sticks. However, most of the exemplary compositions of SCHREIBER which comprise glycerin are not lipcare sticks, which is an indication that the intended function of glycerin in the compositions of SCHREIBER, if any, is not that of a moisturizer.

Clearly, in view of the above facts there is no motivation and/or apparent reason for one of ordinary skill in the art to use more than 2 % of glycerin, if any glycerin at all, in the compositions of SCHREIBER.

Further, while SCHREIBER discloses that antioxidants such as, e.g., glycine and lactic acid may be present as optional components of the compositions disclosed therein and that one or more antioxidants can be present in a total concentration of from 0.001% to 30% by weight, it must not be overlooked that glycerine and lactic acid are only two members of a list of more than hundred exemplary antioxidants of various types which are set forth in column 13, lines 19-62 of SCHREIBER. Accordingly, even if one were to assume, *arguendo*, that in view of the disclosure of SCHREIBER one of ordinary skill in the art would be motivated to include one or more antioxidants in the compositions disclosed therein, there is no apparent reason for him or her to pick specifically glycine and/or lactic acid, i.e., compounds which are not typically and frequently employed as antioxidants (in particular, as antioxidants in cosmetic compositions), let alone in a (combined) concentration of at least 3 % by weight (if one were to assume that the compositions already contain 2 % by weight of glycerin).

In this regard, it is pointed out that although SCHREIBER discloses the optional presence of one or more antioxidants (and several other optional components) in the compositions disclosed therein, it appears that none of the altogether 27 exemplary compositions disclosed in SCHREIBER

contains any antioxidant, which is a clear indication to one of ordinary skill in the art that the use of antioxidants in the compositions of SCHREIBER is of no particular importance and affords no particular benefit. In view thereof, it is not seen that SCHREIBER provides any motivation and/or apparent reason to include any antioxidant, let alone glycine and/or lactic acid, in the compositions disclosed therein.

Applicants further note that the Examiner has not cited a single document which discloses cosmetic (stick) compositions of the type described by SCHREIBER which contain lactic acid and/or glycine in a concentration of at least 5 % by weight (or at least 3 % by weight if one were to assume that 2 % by weight of glycerin are present as well).

Applicants submit that for at least all of the foregoing reasons, SCHREIBER fails to render obvious the use of 5 % to 50 % by weight, based on the total weight of the composition, of one or more of glycerin, glycine and lactic acid (and/or any of the other skin-moisturizing agents recited in the present claims) in the compositions described therein.

PESCATORE apparently is unable to cure any of the deficiencies of SCHREIBER set forth above. Specifically, unlike SCHREIBER, PESCATORE is not concerned with chemical aspects of cosmetic (stick) products at all but relates to a method of filling a (stick) dispenser (see, e.g., title of PESCATORE).

Moreover, while SCHREIBER is concerned with lipsticks, antiacne sticks, sunscreen sticks and eyeshadow sticks with a high water content (see, e.g., abstract of SCHREIBER), PESCATORE relates exclusively or at least predominantly to antiperspirant or deodorant sticks with unknown water content (see, e.g., abstract of PESCATORE).

It is submitted that for the reasons set forth above alone, there is no motivation for one of ordinary skill in the art to combine the disclosures of SCHREIBER and PESCATORE.

Further, even if one were to assume, *arguendo*, that one of ordinary skill in the art would have a reason to combine the disclosures of SCHREIBER and PESCATORE, it is not seen that the mere fact that PESCATORE discloses that an antiperspirant or deodorant of undisclosed chemical composition is present in molten form at a temperature between 65°C to 85°C and is present in a non-molten condition at a temperature of 40°C or below allows any conclusion as to the properties of the (non-deodorant and non-antiperspirant) stick compositions of SCHREIBER, let alone renders it obvious to provide a stick as recited in, e.g., present claims 32 and 36.

In view of the foregoing, it is submitted that SCHREIBER in view of PESCATORE is unable to render obvious the subject matter of any of the present claims, wherefore the rejection of claims 18-28, 32, 33 and 36 under 35 U.S.C. § 103(a) over SCHNEIDER in view PESCATORE is without merit and should be withdrawn, which action is respectfully requested.

Response to Remaining Rejections under 35 U.S.C. § 103(a)

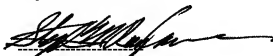
Claim 29 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over SCHREIBER in view of PESCATORE and further in view of BUTUC and claims 34 and 35 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over SCHREIBER in view of PESCATORE and further in view of FABRISI.

Applicants note that claims 29, 34 and 35 are dependent claims. As has been set forth in detail above, the corresponding independent claim (claim 18) is not rendered obvious by SCHREIBER in view of PESCATORE, wherefore the same automatically applies to claims 29, 34 and 35. In view thereof, Applicants refrain from addressing the allegations with respect to claims 29, 34 and 35 which are set forth in the present Office Action, without admitting however, that these allegations are of any merit.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is again respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
Anja BAUER et al.

A handwritten signature in black ink, appearing to read 'Neil F. Greenblum', written over a horizontal dashed line.

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